

**DISTRICT OF COLUMBIA  
DOH Office of Adjudication and Hearings**

DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH  
Petitioner,

v.

DILLON TRUCKING, INC.  
Respondent

Case No.: I-00-11206

---

**FINAL ORDER**

**I. Introduction**

This case arises under the Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1801.01-2-1802.05) and Title 20 Chapter 9 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (No. 00-11206) served on June 25, 2001, the Government charged Respondent Dillon Trucking, Inc. with a violation of 20 DCMR 900.1, which prohibits, with certain exceptions not pertinent here, the idling of a motor vehicle’s engine for more than three (3) minutes while the vehicle is parked, stopped or standing (the “Regulation”). The Notice of Infraction alleged that the violation occurred on May 25, 2001, in the 1300 block of 6<sup>th</sup> Street N.E., and sought a \$500 fine.

Respondent did not file an answer to the Notice of Infraction within the required twenty (20) days after service (fifteen (15) days plus five (5) additional days for service by mail, pursuant to D.C. Official Code §§ 2-1802.02(e) and 2-1802.05). Accordingly, on July 23, 2001,

this administrative court issued an Order finding Respondent in default and subject to the statutory penalty of \$500 pursuant to D.C. Official Code § 2-1801.04(a)(2)(A), and directing the Government to issue a second Notice of Infraction, pursuant to D.C. Official Code § 2-1802.02(f). The Order of default was served on Respondent on July 24, 2001.

On July 26, 2001, before service of a second Notice of Infraction, this administrative court received Respondent's untimely plea of Admit with Explanation, together with a request for the suspension or reduction of any fine or statutory penalty that may be imposed. Respondent admits it violated the Regulation, as charged, and it raises the following matters and circumstances for consideration:

1. There were no posted warnings of the Regulation in the area where the violation occurred;
2. Respondent is located outside the District and, therefore, it would have no knowledge of the Regulation or other laws of the District, unless they are posted;
3. The Government inspector could have given a warning to the driver of the vehicle, rather than issue the Notice of Infraction.
4. Respondent gives its assurances that in the future it will comply with the Regulation.

The Government has not responded within the allotted time. This matter is now ripe for decision.

## **II. Findings of Fact**

1. By its plea of Admit with Explanation, Respondent has admitted that it violated the Regulation as charged in the Notice of Infraction.
2. Respondent's plea was not timely filed.
3. Respondent has accepted responsibility for its unlawful conduct.
4. Respondent has taken steps to ensure future compliance with the Regulation.
5. There is no evidence in the record of a history of non-compliance by Respondent.
6. Respondent has not provided an explanation for its failure to timely respond to the Notice of Infraction.

## **III. Conclusions of Law**

By idling the engine of its truck for more than three minutes while parked, Respondent violated the Regulation on May 25, 2001, as charged in the Notice of Infraction. The fine for this violation is \$500 for the first offense. 16 DCMR §§ 3201.1(b)(1), 3224.3(aaa).

Respondent's explanations that it was unaware of the Regulation and that there were no posted warnings have no legal consequence. In *District of Columbia Department of Health v. Bloch & Guggenheimer*, OAH No. I-00-10439 at 3-4 (Final Order, April 18, 2001), this administrative court said the following in response to a similar argument raised in that case:

As an entity doing business in the District of Columbia, Respondent is expected to be on notice of applicable District of Columbia laws, and is required to be in compliance with those laws – particularly those such as 20 DCMR 900.1 that have been in effect for years. *Accord Department of Health v. Good's Transfer, Inc.*, OAH Final Order, I-00-10436 at 3-4; see also *Shevlin-Carpenter Co. v. State of Minnesota*, 218 U.S. 57,68 (1910) (ignorance of law is no excuse, particularly where “(t)here is no element of deception or surprise in the law.”).

Respondent also asserts that the Government has not done enough to make the public aware of the proscriptions of 20 DCMR 900.1. In the District of Columbia, the Government’s public notice obligation in this regard is to publish the law or regulation in the D.C. Register in keeping with applicable comment and review periods.... The text of 20 DCMR 900.1 and all recent amendments appear to have been published in the D.C. Register in accordance with those requirements....

Respondent’s complaint that the inspector could have given a warning, instead of issuing the Notice of Infraction, also does not excuse the violation. While the inspector has discretion to do this, there is no such legal requirement in connection with the Regulation. *District of Columbia Department of Health v. Santee, Inc.*, OAH No. I-00-10275 at 3 (Final Order, August 31, 2000).

These arguments do not support a suspension or reduction of the fine. However, because Respondent accepts responsibility for the violation, is taking steps to assure future compliance with the Regulation and there is no evidence in the record of a history of non-compliance, I will reduce the fine to \$250. See D.C. Official Code §§ 2-1802.02(a)(2) and 2-1801.03(b)(6); 18 U.S.C. §3553; U.S.S.G. §3E1.1.

Respondent has also requested the suspension or reduction of the statutory penalty. The Civil Infractions Act requires a Respondent to demonstrate “good cause” for failing to answer the

Notice of Infraction within twenty days of the date of its service by mail. If good cause is not shown, the statute requires that a penalty equal to the amount of the authorized fine be imposed. D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f).

The law places the burden of ensuring the timely filing of a plea on Respondent. See *District of Columbia of Health v. Akin and Porter Produce, Inc.*, OAH Case No. I-00-11077 at 4 (Final Order, September 4, 2001). Respondent's letter containing its plea and request for a suspension or reduction of the fine and statutory penalty is dated July 10, 2001. Under normal circumstances, there should have been sufficient time for this letter to be filed timely, if it had been mailed or otherwise sent on or about that date. However, there is no evidence whatsoever in the record when Respondent's letter was prepared or when or how it was transmitted. Because Respondent submitted no evidence to explain its failure to file a timely answer, there is no basis for concluding that there is good cause for its failure to answer the Notice of Infraction, and, therefore, there is no basis to suspend or reduce the statutory penalty of \$500.

#### **IV. ORDER**

Based upon the foregoing findings of fact and conclusions of law, and the entire record in the case, it is, this \_\_\_\_ day of \_\_\_\_\_, 2002:

**ORDERED**, that Respondent Dillon Trucking, Inc. shall pay a total of **SEVEN HUNDRED FIFTY DOLLARS (\$750)**, in accordance with the attached instructions, within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus

five (5) days for service by mail, pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05; and it is further

**ORDERED**, that if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest will accrue on the unpaid amount at the rate of 1½% per month, or portion thereof, beginning with the date of this Order. D.C. Official Code § 2-1803 (i)(1); and it is further

**ORDERED**, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondents pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondents' business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/      **05/15/02**

---

Robert E. Sharkey  
Administrative Judge